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MISSOULA, MT
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PATRICK E. DUFFY
BY _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DARRELL HOWE,)	CV 07-09-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on June 28, 2007. Petitioner Howe timely objected and is entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). Howe is a pro se state prisoner proceeding under a writ of habeas corpus through 28 U.S.C. § 2254. The parties are familiar with the procedural and factual background so it will not be recited. The Court agrees with Judge Lynch's Findings and Recommendation: Howe's claims are barred by the statute of limitations.

As recited in Judge Lynch's June 19, 2007 show cause order, since pleading guilty to sexual intercourse without consent in June 1993 Howe has consistently challenged his legal status.

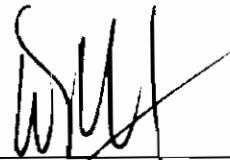
Thus, it is surprising that Howe let the statute of limitations run on his federal habeas petition. The circumstances surrounding the relationship between the presiding judge at the time of conviction, the victim, and the victim's family prompt question, but that is not the issue for this Court. The law requires that the Court dismiss his petition because it was filed past the statutory deadline.

Moreover, Howe has not adequately explained why he chose to wait two years to file this proceeding. In light of his history and the period of time that elapsed, it is not enough to simply allege inadequate access to material. The Court notes that he has not asserted that he was unaware of the one-year statute of limitations regarding his petition. Such an allegation has created equitable tolling exceptions before, but that is not the case here.

Based on the foregoing, I adopt Judge Lynch's Findings and Recommendation (dkt #11) in full.

Accordingly, IT IS HEREBY ORDERED that Howe's petition is DISMISSED WITH PREJUDICE as time-barred and a certificate of appealability is DENIED.

DATED this 25th day of July, 2007.



Donald W. Molloy, Chief Judge
United States District Court